IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

Edward Scott,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	**Civil Action No. 5:17-cv-00499-D**
	§	
Fort Thunder Harley-Davidson,	§	
APS of Oklahoma, LP.,	§	
Harley-Davidson Motor Company,	§	
Harley-Davidson	§	
Motor Company, Inc., and	§	
Harley-Davidson, Inc.,	§	
	§	
Defendants.	§	

PLAINTIFF'S FIRST AMENDED COMPLAINT

To the Honorable United States Judge of Said Court:

COMES NOW, Edward Scott (hereinafter referred to as "Plaintiff"), and respectfully files this First Amended Complaint in accordance with F.R.C.P. 15 against Fort Thunder Harley Davidson and APS of Oklahoma, Harley-Davidson Motor Company, Harley Davidson Motor Company, Inc. and Harley-Davidson, Inc. (hereinafter referred to as "Defendants"), and in support hereof would state and show the following:

I. Parties

1. Plaintiff Edward Scott resides in and is a citizen of Oklahoma City, Oklahoma County, Oklahoma.

2. Defendant Fort Thunder Harley-Davidson, APS of Oklahoma is a foreign entity incorporated in the State of Delaware at all times doing business in the State of Oklahoma. Service on this Defendant is not necessary as they have already been served and filed an Answer.

3. Defendant Harley-Davidson Motor Company, Inc. (Identified as Harley-Davidson Group, Inc. by Defendant) is a foreign company incorporated in Wisconsin and at all times doing business in the State of Oklahoma. Service on this Defendant is not necessary as they have already been served.

4. Defendant Harley-Davidson Motor Company is believed to be a foreign company incorporated in Wisconsin and at all times doing business in the State of Oklahoma. Service on this Defendant is not necessary as they have already been served.

5. Defendant Harley-Davidson, Inc. is a foreign company incorporated in Wisconsin and at all times doing business in the State of Oklahoma. Service on this Defendant is not necessary as they have already been served.

II. Jurisdiction

6. This Court has jurisdiction over the lawsuit under the provisions of 28 U.S.C. Section 1332.

7. The parties to this lawsuit are citizens of different states, and the matter in controversy exceeds the sum or value of $75,000.00, exclusive of interest and costs.

III. Facts

8. On or about October 14, 2013, Edward Scott was riding his 2014 Harley Motorcycle (VIN 1HD1GVM19EC306926).

9. Mr. Scott was riding Eastbound on SW 29th Street when the vehicle in front of him slowed so that it could turn into a gas station. Mr. Scott's brakes failed causing him to rear-end the vehicle in front of him.

10. This motorcycle was a recent purchase from Defendant Fort Thunder Harley-Davidson, APS of Oklahoma.

11. Defendant Fort Thunder Harley-Davidson, APS of Oklahoma ("Fort Thunder") was responsible for the initial inspection of the motorcycle prior to Mr. Scott taking possession.

12. The subject motorcycle/vehicle was designed by Defendants Harley-Davidson Motor Company, Inc. (Identified as Harley-Davidson Group, Inc. by Defendant), Harley-Davidson Motor Company and Harley-Davidson, Inc. (Collectively referred to as "Harley Davidson" hereafter).

13. The subject motorcycle/vehicle was manufactured by Defendants Harley-Davidson.

14. The subject motorcycle/vehicle was also assembled and tested by Defendant Harley-Davidson.

15. The subject motorcycle/vehicle was also assembled and tested by Defendant Harley-Davidson.

16. The subject motorcycle/vehicle was inspected by all Defendants prior to Mr. Scott taking possession.

17. At the time of the accident, Edward Scott was properly operating his motorcycle.

18. However, despite properly operating the motorcycle, Mr. Scott sustained serious injuries when the motorcycle's brakes failed to operate as expected.

19. The brakes are a safety system, and when it fails it places the rider in a known dangerous situation.

20. Motorcycle and vehicle manufacturers have known for decades that the proper design, assembly, manufacturing, and testing of a motorcycle/vehicle helps prevent or minimize injuries or death.

21. Lee Iacocca, former President of Ford Motor Company stated, while President and CEO of Chrysler, that "Every American has the right to a safe vehicle."

22. General Motors has stated in the past that, "The rich don't deserve to be safer…Isn't it time we realized safety is not just for the pampered and the privileged? Safety is for all."

23. Volvo has stated that it has a goal that no one is killed or injured in a Volvo vehicle by the year 2020. Volvo has also stated that, "Technologies for meeting the goal of zero injuries and fatalities are basically known today – it is a matter of how to apply, finance, distribute and activate."

24. Because every American has the right to a safe motorcycle/vehicle, because safety is for all, and because technologies for meeting the goal of zero injuries and fatalities are basically known today, it is incumbent upon manufacturers to investigate and find out what other manufacturers are doing with regards to safety and to apply those same methods or technology to their own motorcycle/vehicle.

25. Furthermore, a manufacturer cannot choose to use safer technology and/or procedures in Europe, Australia, Japan, or some other country and refuse or fail to offer that same safety technology and/or procedure to consumers in America.

IV. Cause(s) of Action as to Defendants Harley Davidson

26. It was entirely foreseeable to and well-known by Defendants that accidents and incidents involving their motorcycles/vehicles, such as occurred herein, would on occasion take place during the normal and ordinary use of said motorcycle/vehicle.

27. The injuries complained of occurred because the motorcycle/vehicle in question did not operate as expected.

28. Defendants, either alone or in conjunction with some other individual(s) and/or entity(ies), inspected, designed, manufactured, marketed, assembled, and/or tested said motorcycle/vehicle in question.

29. As detailed herein, the motorcycle/vehicle contains and/or Defendants have committed either design, manufacturing, marketing, assembling, and/or testing defects.

30. Defendant either knew or should have known of at least one safer alternative design and/or quality control procedure which would have prevented the serious injuries to Edward Scott.

31. In addition to the foregoing, Defendants, either alone or in conjunction with some other individual(s) and/or entity(ies), designed, manufactured, marketed, assembled, and/or tested said motorcycle/vehicle in question to be unreasonably dangerous and defective within the meaning of Section 402(A) Restatement (Second)

Torts, in that the motorcycle/vehicle was unreasonably dangerous as designed, manufactured, assembled, marketed, and/or tested because Defendants knew and/or should have known of the following, non-exhaustive list of defects:

a. The motorcycle/vehicle fails to provide proper braking system;
b. The motorcycle/vehicle fails to provide adequate warning when the braking system is inoperative or failing to function as expected;
c. The motorcycle/vehicle failed to be properly inspected prior to being placed into the stream of commerce, specifically Edward Scott's possession; and/or
d. The motorcycle/vehicle violated to perform as expected.

32. Defendants failed to conduct proper testing and engineering analysis during the design, development, inspection and testing of the motorcycle/vehicle.

33. Defendants were negligent in the manufacture, assembly, marketing, inspecting and/or testing of the motorcycle/vehicle in question.

34. In designing a motorcycle/vehicle, efforts should be made by manufacturers to identify potential risks, hazards, and/or dangers that can lead to serious injury or death;

35. Once potential risks, hazards, and/or dangers are identified, then the potential risks, hazards, or dangers should be eliminated if possible.

36. If the potential risks, hazards, and/or dangers can't be eliminated, then they should be guarded against.

37. If the potential risks, hazards, and/or dangers can't be eliminated or guarded against, they should at least be warned about.

38. A company that does not conduct a proper engineering analysis that would help it to identify potential risks, hazards, and/or dangers that could seriously injure someone is negligent.

39. Based upon information and/or belief, Defendants either used or knew about proper quality control procedures to prevent a motorcycle/vehicle with a defect from entering the stream of commerce.

40. When Defendants designed the subject motorcycle/vehicle, it did not reinvent the wheel. Defendant used an enormous amount of human capital which had been acquired from numerous different engineers which had worked on many prior motorcycles/vehicles. This knowledge would have been utilized in different aspects of the various designs of the subject motorcycle/vehicle.

41. Defendants are currently in exclusive possession and control of all the technical materials and other documents regarding the design, manufacture, inspecting and testing of the motorcycle/vehicle in question. Defendants are also in possession of what, if any, engineering analysis it performed.

42. However, it is expected that after all of these materials are produced in discovery and/or after Defendants' employees and corporate representatives have been deposed, additional allegations may come to light.

43. Lastly, the materials from other models, years, and countries will provide evidence regarding what Defendants knew, when they knew it, and about what was utilized or not utilized as well as the reasons why.

44. The foregoing acts and/or omissions, design defects, and/or negligence of Defendants were the producing, direct, proximate, and/or legal cause of Edward Scott's serious injuries and Plaintiffs' damages.

V. Cause(s) of Action as to Defendant Fort Thunder Harley-Davidson APS of Oklahoma, L.P.

45. It was entirely foreseeable to and well-known by Defendant that accidents and incidents involving their motorcycles/vehicles, such as occurred herein, would on occasion take place during the normal and ordinary use of said motorcycle/vehicle.

46. The injuries complained of occurred because the motorcycle/vehicle in question did not operate as expected.

47. Defendant, either alone or in conjunction with some other individual(s) and/or entity(ies), inspected, marketed, assembled, and/or tested said motorcycle/vehicle in question.

48. As detailed herein, Defendant Fort Thunder committed acts and/or omissions in the inspection, marketing, assembling, and/or testing of the motorcycle which permitted the motorcycle to enter the stream of commerce, specifically the possession of Mr. Scott, with defects in the braking system.

49. Defendant either knew or should have known to implement proper policies and procedures in the inspection, marketing, assembling, and/or testing of the motorcycle which would have prevented the serious injuries to Edward Scott.

50. The foregoing acts and/or omissions, design defects, and/or negligence of Defendants were the producing, direct, proximate, and/or legal cause of Edward Scott's serious injuries and Plaintiff's damages.

VI. Damages to Plaintiff

51. Plaintiff seeks recovery for damages under any applicable statute and/or common law of the state of Oklahoma.

52. As a result of the acts and/or omissions of one or more of the Defendants, Plaintiff Edward Scott, has endured pain and suffering, extreme emotional distress, mental anguish, impairment, disfigurement, interference with his daily activities, and a reduced capacity to enjoy life as a result of his serious injuries.

53. As a result of the acts and/or omissions of one or more of the Defendants, Plaintiff Edward Scott has suffered a diminished earning capacity as a result of his serious injuries.

54. As a result of the acts and/or omissions of one or more of the Defendants, Plaintiff Edward Scott has become obligated to pay extensive medical expenses in the past and, will continue in the future, as a result of his serious injuries.

55. The above and foregoing acts and/or omissions of one or more of the Defendants, resulting in the serious injuries to Plaintiff, has caused actual damages to Plaintiff in an amount in excess of the minimum jurisdictional limits of this Court.

VII. Prayer

56. For the reasons presented herein, Plaintiff prays that Defendants be cited to appear and answer, and that upon a final trial of this cause, Plaintiff recover judgment against Defendants for:

a. actual damages;
b. prejudgment and post-judgment interest beginning October 15, 2013;
c. costs of suit; and
d. all other relief, general and special, to which Plaintiff is entitled to at law and/or in equity, and/or which the Court deems proper.

Respectfully submitted,

/s Stewart D. Matthews

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of May, 2017, I caused to be electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Western District of Oklahoma, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s Stewart D. Matthews
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